

properly be described as merely regulatory — which in my view it cannot — I would adopt and rely upon the language of Holmes J. in (1922) 260 U.S. at page 417 cited by Viscount Simonds in *Belfast Corporation v. O.D. Cars Ltd.*⁽⁹⁾ at 519:

“The general rule at least is, that, while property may be regulated to a certain extent, if regulation goes too far it will be recognised as a taking.”

The Act of 1972 went so far and must have been recognised by the Legislature as going so far as making it inevitable that the Authority would take the respondents’ business immediately the Act came into force. If, contrary to my view, the amending Act can properly be characterised as merely regulatory and it does not go far enough to be recognised as a taking, it is impossible to imagine any regulation that could be so recognised.

I entirely agree with my noble and learned friends that the right to employ pilots was not acquired from the respondents by the Authority. Before the amending Act, the Authority like anyone else was entitled to employ pilots and compete with the respondents. After the amending Act the appellants were given the exclusive right to employ pilots. The vice in the amending Act was that it made it a criminal offence for pilots to be employed by the respondents or anyone else except the Authority and thereby made it inevitable, for the reasons I have already set out, that the respondents’ business should be taken over by the Authority.

The Federal Court having found in favour of the present respondents ordered that the case be remitted to the trial court so that the question of damages payable to the present respondents by the present appellants should be ascertained. I hardly think that it can seriously be meant that if section 35A was *ultra vires*, “there was nothing to stop [the respondents] carrying on their pilotage activities” and that the respondents would still not be able to obtain any damages or compensation although the Authority *de facto* acquired their business four years ago. Indeed I understood Counsel for the appellants very fairly to concede on behalf of his clients that they did not wish the Order of the Federal Court to be disturbed if this Board came to the conclusion that the appellants had by virtue of the amending Act of 1972 been in breach of Article 13(2) of the Constitution.

For these reasons I would have advised the Yang Dipertuan Agung to dismiss this appeal with costs and to remit this case to the trial court in accordance with the Order made by the Federal Court.

Appeal allowed.

Solicitors: *Stevenson, Harwood & Tatham; Buleraig & Davis.*

A SINGAPORE REPORTS

THE “PANGKALAN SUSU/PERMINA 3001” RASU MARITIMA S.A. v. “PANGKALAN SUSU/PERMINA 3001” (OWNERS) & PERSONS INTERESTED

[O.C.J. (Rajah J.) January 12, 1977]

[Singapore — Admiralty in Rem No. 340 of 1976]

Shipping — Admiralty suit in rem — Claim against defendants for non-payment of charter hire — Whether defendants are “beneficial owners” and liable — Meaning of “beneficial owners” — R.S.C. 1970, O. 70 r. 4(7) — High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(4).

On May 9, 1974 a purchase contract for the construction and purchase of a tanker was entered into between Greenock, a corporation registered under the laws of the Republic of Liberia, the seller and Pertamina, the buyer (defendants). The vessel was to be delivered on or before March 31, 1976. The first payment was to be made on delivery date and the balance of the payments was to be made in 71 consecutive instalments and upon full payment the title to the vessel was to be transferred to the defendants without any further payments. On November 1, 1975, Greenock assigned all of its rights under the said purchase contract to Ozark and on March 29, 1976 the vessel was duly delivered under the contract to the defendants. Since then the defendants had been in possession and control of the vessel. However, she was registered in the Republic of Panama on July 1976 in the name of Ozark carrying the name of “Pangkalan Susu/Permina 3001”.

On September 20, 1976, the plaintiffs commenced an Admiralty *in Rem* action against the defendants for the sum of US\$3,929,090.24 for non-payment of instalments of charter hire due for the months of February to August 1976 and bunkers under the charter-party in respect of the vessel “Bruce Ruthi II”. The said vessel “Permina 3001” was accordingly arrested on September 23, 1976.

The plaintiffs contended that even though Ozark was the registered owner of the vessel the said vessel nevertheless, for purposes of section 4(4) of the High Court (Admiralty Jurisdiction) Act was “beneficially owned as respects all the shares therein” by the defendants for she was in the possession and control of the defendants. The defendants on the other hand argued, *inter alia*, that the ordinary use of the words “beneficial owner” meant a person with a proprietary interest in the vessel either legal or equitable which the defendants were not. They further contended that words “as respects all the shares therein” suggested that a proprietary interest was meant since shares in a ship were the means by which a ship was owned, title passing with the shares.

The issue before the court was whether the vessel being in possession and control of the defendants by virtue of a contract to purchase it by instalments, such instalments not having been fully paid, could be said to be beneficially owned as respects all the shares therein by the defendants.

Held, setting aside the writ: (1) the words “beneficial ownership as regards all the shares therein” must be given their full and accepted meaning in our laws when the Singapore Act was put on the statute book in 1962, and must not be construed in the light of the Brussels Convention as Singapore is neither a signatory to nor has it acceded to the International Convention Relating to the Arrest of Seagoing Ships 1952;

(2) the vessel was, at the date when the action was brought, not “beneficially owned as respects all the shares therein” (the legal and equitable owner being Ozark) by the defendants within the meaning of section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6);

(3) as all the requirements of section 4(4) of the said Act had not been fulfilled the court had no jurisdiction to entertain proceedings *in rem* against the vessel in respect of the claim.

Cases referred to:-

(1) *St. Merriel* [1963] P. 247, 258.

(2) *Andrea Ursula* [1973] 1 Q.B. 265.

- (3) *Wood Preservation v. Prior* [1969] 1 W.L.R. 1077.
 (4) *Ayerst v. C. & K. (Construction) Ltd.* [1976] A.C. 167.

IN REM ADMIRALTY SUIT

Michael Thomas Q.C. (P. Arul with him) for the plaintiffs.

Richard Stone Q.C. (S. Selvadurai with him) for the defendants.

Rajah J.: On a motion praying for the setting aside of the Writ of Summons in Admiralty Suit No. 340 of 1976 and all subsequent proceedings therein, after hearing arguments on both sides I acceded to the motion and ordered costs of the motion and action against the plaintiffs. The material facts, as they appeared from the affidavits and the documents put before me, are as follows.

On August 23, 1973 a charter-party was entered into between Rasu Maritima S.A. (Rasu), a company incorporated in Liberia, the Owners (the plaintiffs herein), and Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina), Jalan Perwira 6, Jakarta, Indonesia, the Charterers (the defendants herein), in respect of a subject charter (Hull No. 2391), now named "Bruce Ruthi II", for 10 years from date of delivery of the said vessel. By a Rider dated July 7, 1975 to the said charter-party the parties thereto, for the consideration therein stated, agreed to convert the subject charter (Hull No. 2391) from a Time-Charter to a Hire-Purchase Charter and Rasu thereby undertook "upon termination of the subject charter after 120th fully paid consecutive months to transfer title of the vessel to Pertamina. Upon delivery to Pertamina under this Rider the vessel shall be in class, free of all mortgages, liens and encumbrances provided that Pertamina has fully complied and performed all of the obligations on their part to be performed under the terms and conditions of the subject charter." It was not in dispute that Hull No. 2391 after being named "Bruce Ruthi II" had been delivered to Pertamina under the terms of the said charter-party on or before February 1976.

On September 20, 1976 Rasu commenced an Admiralty *in Rem* action (No. 340 of 1976) against the owners of and other persons interested in the ship or vessel "Pangkalan Susu" otherwise known as "Permina 3001" whereby they claimed against the defendants the sum of U.S.\$3,929,090.24 for non-payment of the instalments of charter hire due for the months of February to August, 1976 and bunkers under the aforementioned charter-party in respect of the vessel "Bruce Ruthi II".

In paragraph 6 of the affidavit, filed on behalf of the plaintiffs on September 20, to lead the Warrant of Arrest, it was deposed as follows: —

"This action is brought by the Plaintiffs pursuant to section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6). To the best of my knowledge and belief the defendants were at the time when the cause of action arose the charterers or in possession or control of the ship or vessel 'Bruce Ruthi II', and would be liable to the plaintiffs in an action *in personam*. They were also at the date of the issue of the Writ in this action the beneficial owners of the ship or vessel 'Pangkalan Susu' otherwise known as 'Permina 3001' as respects all the shares therein."

The vessel "Permina 3001" was accordingly arrested on September 23, 1976.

A Section 4(4) of the High Court (Admiralty Jurisdiction) Act (Singapore Act) reads as follows: —

"In the case of any such claim as is mentioned in paragraphs (d) to (q) of subsection (1) of section 3 of this Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action *in personam* was, when the cause of the action arose, the owner or charterer of, or in possession or in control of, the ship, the admiralty jurisdiction of the court may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action *in rem* against —

- B** (a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or
 (b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid."

C It is to be noted that the law relevant to the subject case in the Singapore Act is on all fours with the Administration of Justice Act 1956 (English Act). The English Act was passed for the purpose, among others, of giving effect to the adherence of the United Kingdom to the International Convention Relating to the Arrest of Seagoing Ships (Command Paper 8954) made at Brussels on May 10, 1952. The Republic of Singapore is neither a signatory nor has it acceded to the Brussels Convention of May 10, 1952.

The history of "Permina 3001" is that on May 9, 1974 a purchase contract for the construction and purchase of one (1) 35,250 DWT motor tanker (Kanasashi Hull No. 1120) was entered into between **E** Greenock Shipping Corporation (Greenock), a corporation registered under the laws of the Republic of Liberia, the seller, and Pertamina, the buyer. The vessel was to be delivered on or before March 31, 1976. The first payment was to be made on delivery date and the balance of the payments was to be made in 71 consecutive monthly instalments. Both the seller and the buyers had the right to assign subject to certain provisions in the contract. Upon full payment of all the 71 consecutive monthly payments there was to be a transfer of title. Under Article XI (7)

"TRANSFER OF TITLE UPON FULL PAYMENT:

Upon payment in full as specified herein for the VESSEL furnished hereunder, the title to the VESSEL with all its belongings on board and/or ashore is to be transferred to BUYER without any further payment to SELLER, free from all encumbrances and maritime liens. At the time of transfer of title to the VESSEL to BUYER she shall be in class and her class certificates shall be free of recommendations.

On full payment or prepayment as stipulated in this Contract, SELLER shall immediately execute or procure to be executed a legal transfer of the VESSEL to BUYER or its nominees free from all encumbrances and maritime liens. The SELLER shall provide for deletion of the VESSEL from the Ships Registry and deliver a Certificate of Deletion therefrom to the BUYER."

By an Assignment Agreement dated November 1, 1975 between Greenock and Ozark Shipping Co. S.A. of Panama (Ozark) Greenock assigned all of its rights and interests under the said purchase contract to Ozark. **I** The vessel was duly delivered under the contract to Pertamina on or about March 29, 1976, and since then Pertamina have been in possession and control of her. However she was registered in the Republic of Panama on July 12, 1976 in the name of Ozark carrying the name of "Pangkalan Susu/Permina 3001".

It is in these circumstances that the defendants Pertamina entered a conditional appearance on Sep-

tember 27, 1976 without prejudice to an application to set aside the writ and all subsequent proceedings.

Accordingly they filed a Motion dated October 5, 1976 for the following order or orders: —

- "1. That the Writ of Summons and all subsequent proceedings herein be set aside for want of jurisdiction *in rem* under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6) and/or for non-compliance with the said section.
2. That the Warrant of Arrest be set aside on the ground that the affidavit to lead the warrant does not establish any right to arrest under the said section 4(4) or at all and/or on the ground that the said affidavit is defective in that it does not comply with Order 70 rule 4(7).
3. That the plaintiffs do pay Pertamina's costs of this action and/or of this Motion to be taxed if not agreed."

It was common ground that at the time when the cause of action arose Pertamina (the defendants) were the charterers or in possession or control of the said "Bruce Ruthi II" and that an action *in personam* could rightfully have been pursued against Pertamina for the charter hire claim but it was not common ground that at the date of the issue of writ, namely September 20, 1976, that Pertamina were —

- (i) the beneficial owners of the said vessel "Bruce Ruthi II" as respects all the shares therein or
- (ii) the beneficial owners of the vessel "Pangkalan Susu", otherwise known as "Permina 3001" as respects all the shares therein.

It was also common ground between the parties herein that the issues for determination on the Motion before the court were whether, on a true construction of section 4(4) of the Singapore Act, corresponding to section 3(4) of the English Act —

- (i) "Permina 3001" (the ship arrested) must have had (and did not have) the same beneficial owner as "Bruce Ruthi II", the vessel in respect of which the claim arises — this argument had been raised before in Admiralty *in rem* No. 277 of 1976 (Civil Appeal No. 31 of 1976)* and it was agreed between the parties that the court would await the decision of the Court of Appeal. Therefore no submissions were made on this particular issue before me. In the event the Court of Appeal upheld the arrest of the ship, and therefore this ground of objection in this case must fail;
- (ii) in the alternative all other requirements of the said section 4(4) having been complied with by the plaintiffs, Pertamina (being the party against whom the action *in personam* could have been brought when the cause of action arose in respect of which the said writ of September 20, 1976 was issued) "is the beneficial owner of "Permina 3001" as respects all the shares therein" when the action was brought, *i.e.* when the said writ was issued on September 20, 1976.

The case sought to be made by the plaintiffs (Rasu) in the alternative was that when they brought the action Pertamina were in possession and control of the ship "Permina 3001" and that being so Pertamina were the beneficial owners as respects all the

A shares in "Permina 3001". In other words it seemed to me that the plaintiffs' contention was that, even though Ozark was the registered owner of "Permina 3001", the said vessel nevertheless, for purposes of section 4(4) of the Singapore Act was "beneficially owned as respects all the shares therein" by Pertamina for the simple reason that the said vessel was in the possession and control of Pertamina.

As against this the defendants contended that —

- (i) the ordinary use of the words "beneficial owner" means a person with a proprietary interest in the vessel either legal or equitable,
- (ii) Pertamina was not the legal or equitable owner and
- (iii) the use of the words "as respects all the shares therein" suggests that a proprietary interest is meant since shares in a ship are the means by which a ship is owned, title passing with the shares.

D In support of defendants' contentions Mr. Stone Q.C. counsel for the defendants urged upon the court —

- (a) that support for such a construction is found in Mr. Justice Hewson's decision in the *St. Merriel*⁽¹⁾ (at page 258) and that the *dicta* in the *St. Merriel* is correct and although the judge did not consult the Brussels Convention of May 10, 1952 his decision gives effect to the ordinary meaning of the phrase.
- (b) that when the Convention relating to the arrest of Seagoing Ships is consulted it will be seen that Article 3 lends support to the view that a proprietary interest in the property arrested is intended. Article 3 reads as follows: —

F "(1) Subject to the provisions of paragraph (4) of this article and of article 10, a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1(1) (o), (p) or (q). (2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons. . . . (4) When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claims. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship."

H (c) that the *Andrea Ursula* case,⁽²⁾ was wrongly decided and I should follow the decision in *St. Merriel*.

I (d) that cases where "beneficially owned" have been construed as referring to the use and benefit ("fruits") of the property in question are revenue cases; *Wood Preservation v. Prior*⁽³⁾ and *Ayerst v. C. & K. (Construction) Ltd.*⁽⁴⁾ The purpose of revenue law is to prevent evasion and affords no assistance in construing the meaning of "beneficially owned" in the context of jurisdiction.

In the final analysis of the arguments presented

* *The Permina 108*, ante pp. 43 and 49.

to me by Mr. Michael Thomas Q.C., counsel for the plaintiffs, I was being asked by him to say that "beneficial ownership as respects all the shares therein" is synonymous and co-terminous with "possession and control". He invited me to follow the decision of the experienced Admiralty judge Brandon J. in the *Andrea Ursula*. "Beneficial ownership" was in that case construed (in the identical corresponding provision of the English Act) as including the interest of the person (such as Pertamina) who, although not the registered or legal or equitable owner of the ship arrested, was lawfully in possession and control of the ship having "all the benefit and use of her which a legal or equitable owner would ordinarily have (see at page 269F).

It was not disputed that Pertamina had the possession and control of "Permina 3001" under the said conditional sale agreement. The vessel had been delivered to them. It was in their possession and control when the writ was issued. They were trading the vessel for their profit. They would have become equitable owners when the last instalment of the purchase price was paid. They would have become legal owners when Ozark transferred title to them, pursuant to their contractual obligations. They would have become registered owners on registration as indeed Ozark were then.

I therefore considered the *Andrea Ursula* case. In that case the ship under arrest, the *Andrea Ursula*, was both at the time when the action arose and at the time the writ was issued, in the possession and control of the demise charterers. In our case it was common ground that "Permina 3001" was not under a demise charter but under a time charter, the nature and terms of which gave possession and control of the vessel to Pertamina. A point of difference between the *Andrea Ursula* case and the "Permina 3001" case is that the question in the *Andrea Ursula* case was whether a demised ship in the possession and control of a person could be said to be beneficially owned as respects all the shares therein by that person whereas the question in the "Permina 3001" case was whether "Permina 3001" being in the possession and control of Pertamina by virtue of a contract to purchase it by instalments, such instalments not having yet been fully paid, could be said to be beneficially owned as respects all the shares therein by Pertamina. In this respect the only point at which these two cases are *ad idem* is that in both the cases the vessels were in the possession and control of the persons liable in an action *in personam*. Therefore it seemed to me what I had to decide in this case was whether merely being in possession and control of "Permina 3001" made Pertamina the beneficial owners as respects all the shares therein for purposes of section 4(4) of the Singapore Act. It was clear from the facts of this case that the registered owners of "Permina 3001" were Ozark, the legal owners were also Ozark, the equitable owners were Ozark. The only proprietary interest, if such it can be called, was that Pertamina had an equitable interest in the conditional sale agreement being carried out by Ozark. If and when Pertamina paid all the instalments under the conditional sale agreement then and only then could Pertamina have become the beneficial owners. Ozark would then become a bare trustee with an enforceable duty

on their part, at the behest of Pertamina, to transfer the ship as required by Pertamina and to take all such steps as to make Pertamina the registered owners of the ship.

Further under section 4(4) of the Singapore Act there are two significant and to my mind crucial points of time to be considered — (A) when the cause of action arose and (B) when the action is brought. What is required in (A) is that at that point of time the person liable *in personam* has to be in one of four categories (i) owner, (ii) charterer, (iii) in possession of the ship or (iv) in control of the ship; but what is required in (B) is that the person liable *in personam* has to be the beneficial owner as respects all the shares of the ship to be arrested. It seemed that what Mr. Thomas was urging me to do was to give the same meaning to the words "beneficially owned as respects all the shares therein" in (B) as the words "the owner or charterer of, or in possession or in control of, the ship" have in (A). If Mr. Thomas' urgings in this had been correct then it seemed to me that the Legislature in Singapore (and this is important as we are not a party to the Brussels Convention of 1952) would have, instead of using "beneficially owned as respects all the shares therein" in (B), have used the same words, *i.e.* "the owner, or charterer of, or in possession or control of the ship" in (B). But such is not the case and as the Legislature must have intended to draw a distinction between point of time (A) and point of time (B), I therefore gave the words "beneficial ownership as regards all the shares therein" their full and accepted meaning in our laws when the Singapore Act was put on the statute book in 1962. In construing section 4(4) of the Singapore Act the courts here are not under the same constraints and inhibitions that Brandon J. felt he was under, for the Republic of Singapore is neither a signatory to nor has it acceded to the International Convention Relating to the Arrest of Seagoing Ships 1952 as has the United Kingdom. It is clear from a reading of the whole of the *Andrea Ursula* case that the learned judge felt he had to construe "beneficial ownership" in a way as to give effect to the Brussels Convention. Indeed part of the headnote to the case reads:

"Held, that, as section 3(4) of the Act of 1956 was apparently intended to give effect to the provisions of article 3 of the International Convention Relating to the Arrest of Seagoing Ships 1952, in order to give full effect to that article the expression 'beneficially owned' in section 3(4) of the Act had to be given a meaning to cover the case of a ship which though not legally or equitably owned by a person was in his full possession and control (post, p. 272A-C); it included not only a demise charter but any other person with similar complete possession and control who might thereby become liable on a claim within paragraph (d) to (r) of section 1(1) of the Act (post, p. 272B-C); accordingly it followed that the repairers could sue *in rem* (post, p. 273H).

Principles of construction in *Salomon v. Customs and Excise Commissioner* [1967] 2 Q.B. 116, C.A. and *Post Office v. Estuary Radio Ltd.* [1968] 2 Q.B.

The St. Merriel [1963] P. 247 not followed."

But the Singapore Courts for the reasons I have stated are not under such constraints and inhibitions and I therefore gave the phrase "beneficial ownership as respects all the shares therein" its full and proper meaning as known to our courts.

With regard to the words "as respects all the shares therein" I accepted the view of counsel for the

defendants that such words suggest that a proprietorial interest is meant since shares in a ship are the means by which a ship is owned, title passing with the shares. I agreed with the *dicta* of Hewson J. in the *St. Merriel* and adopted it, more so as he had not consulted the Convention and his decision gives effect to the ordinary meaning of the phrase, I quote —

"I am further satisfied on the second point to be decided on this subsection that when the action was brought this ship was beneficially owned, as respects all the shares therein, by the owners, the Saint Line. If the Act had said 'beneficially owned' and stopped there, Mr. Darling admitted that it might have been arguable that it might have embraced the charterers by demise. 'Beneficially owned' is not defined in this Act; and there are circumstances where a ship is owned by one person — that is true ownership — where that person is the only person with a right to sell and yet where the same ship is beneficially possessed — if I may use that expression — or beneficially controlled, by some other person, such as in this case, where the ship is under charter by demise. But the words of the Act are 'as respects all the shares therein,' and I conclude that the words are there for some purpose and that that purpose is to indicate the true owner, that is, the only person with a right to sell all the shares. So that under this section also I find that when the section was brought the Saint Line were the persons who beneficially owned the ship as respects all the shares therein. It follows from what I have said that this writ must be set aside."

For the reasons I have given I was of the opinion that the "Permina 3001" was, at the date when this action was brought, not "beneficially owned as respects all the shares therein" (the legal and equitable owner being Ozark) by Pertamina within the meaning of section 4(4) of the Singapore Act. As all the requirements of section 4(4) had not been fulfilled I held that the court has no jurisdiction to entertain proceedings *in rem* against the "Permina 3001" in respect of the claim and I accordingly ordered that the writ and all subsequent proceedings herein must be set aside. The second prayer in the motion was not canvassed before me and I therefore made no order on it.

In paragraph 6 of the affidavit of Kare Aaserud filed herein on September 20, 1976 it was alleged on behalf of the plaintiffs (Rasu Maritime S.A.) that Ozark, the registered owners of "Permina 3001", was a wholly-owned subsidiary of Pertamina. This was denied by Pertamina in the affidavit of Gregory Kumar Emmanuel, filed herein on its behalf on October 5, 1976, with the statement that "there is no corporate connection at all between Ozark and Pertamina". This allegation on the part of the plaintiffs has not been denied by Ozark although they filed an affidavit herein through Selvadurai Rajkumar on October 11, 1976.

There was no proper evidence regarding the matter of Ozark being a wholly-owned subsidiary of the defendants Pertamina and this matter was not pursued before me. If it had been properly pursued before me as a matter relevant to this question of "beneficial ownership as respects all the shares of "Permina 3001"" then I would have given consideration to the question whether I should or should not have taken this aspect of the case as relevant to the issues raised before me in the motion.

The motion was accordingly allowed with costs.

Motion allowed.

Solicitors: Rodyk & Davidson; Selvadurai & Emmanuel.

THE "HALCYON ISLE"
TODD SHIPYARDS CORPORATION v.
THE "HALCYON ISLE" OWNERS & OTHER
PERSONS INTERESTED
BANKERS TRUST INTERNATIONAL LTD. v.
"HALCYON ISLE" & ORS.

[O.C.J. (Kulasekaram J.) January 19, 1977]

[Singapore — Admiralty In Rem Nos. 150 & 151 of 1974]

Conflict of Laws — Shipping — Several claims against proceeds of sale of mortgaged ship — Issue of priority of payments — Plaintiffs relying on maritime lien on vessel — Claim under United States Law — Whether claim is tenable under lex fori.

The ship "The Halcyon Isle" was arrested by "BTI", mortgagees of this vessel on September 5, 1974 in Singapore. The ship was subsequently sold on March 5, 1975 and the proceeds were paid into court. There were in all 13 claims. With the exception of the plaintiffs there were no disputes in regard to the priority of payments to the several claimants against the said funds. The plaintiffs claimed priority of payment before "BTI" Mortgagee's claim No. 12. The plaintiffs' claim is for \$237,011 with interest for repairs executed, materials supplied and services rendered to the vessel "Halcyon Isle" at their repair yard at Brooklyn, New York during March, 1974 pursuant to a contract with the owners. The plaintiffs contended that their claim for repairs done to the said vessel under the laws of the United States of America carried a maritime lien on the vessel and hence over the said fund and they were entitled to priority of payment on their claim over "BTI" Mortgagee's claim which is merely that of a mortgagee of the vessel.

The question before the court was whether the plaintiffs on their claim were entitled to maritime lien under our laws.

Held: (1) a maritime lien remains essentially as a remedial right though it appears to have some attributes of a substantive right;

(2) "BTI" mortgagee's claim were entitled to priority over the plaintiffs' claim.

Cases referred to:-

- (1) *The Dictator* [1892] P. 304.
- (2) *The Castlegate* [1893] AC. 38, 52.
- (3) *The Bold Buccleugh* (1851) 7 Moo. P.C. 267.
- (4) *The Tervaete* [1922] P. 259.
- (5) *Musurus Bey v. Gadban* [1894] 2 Q.B. 352.
- (6) *The Acrux* [1965] P. 391.
- (7) *The Tolten* [1946] P. 135.
- (8) *The Colorado* [1923] P. 102.
- (9) *The Standhill case* [1926] S.C.R. 680 (Canada).
- (10) *The Astoria* [1927] 4 D.L.R. 1022.
- (11) *The Ioannis Daskaleis* [1974] 1 Lloyd's Rev. 174.

ADMIRALTY IN REM.

Richard Stone Q.C. (Raj Kumar with him) for the plaintiffs.

Michael Thomas Q.C. (Loh Boon Huat with him) for the defendants.

Kulasekaram J.: The ship "The Halcyon Isle" was arrested in Admiralty Suit 151/74 by Bankers Trusts International Ltd., who are the mortgagees of this vessel hereinafter referred to as the "BTI mortgagees" on September 5, 1974 in Singapore.

The ship was subsequently sold on March 5, 1975 and the proceeds have been paid into court. Various necessary payments over which there were no disputes have been made under orders of court. Time for claims to come in expired on August 6, 1975 and